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VOLUME 33

IN THE SUPERIOR COURT,

State of California, County of Sacramento.

OCTOBER SESSION, 1881.

HON. JACKSON TEMPLE, - - - - - - - PRESIDING JUDGE.

WINFIELD J. DAVIS, OFFICIAL REPORTER.

SAMUEL OSBOURNE AND WILLIAM M. CUTTER, REPORTERS.

The People of the State of California,
vs.
The Gold Run Ditch and Mining Co.

COUNSEL:

For Plaintiff,

HON. A. L. HART, Attorney General, GEORGE CADWALADER, ISAAC S. BELCHER, A. L. RHODES, RICHARD BAYNE.

For Defendant,

J. K. BYRNE, W. C. BELCHER, S. M. WILSON, W. T. WALLACE, A. B. DIBBLE, A. P. CATLIN.

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In the Superior Court of the State of California in and for the County of Sacramento.

The People of the State of California
vs.
The Rock Run Ditch and Mining Company

Afternoon Session
Saturday
January 7/87

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Winfred J. Davis
Official Reporter

Afternoon Session
Saturday Jany 7 /82

Cross-Examination
of
L. S. Bassett
resumed

Mr. Hart. Do you know when it was that the filling of the Gas Works front began to interfere materially with the drainage of the City South of the levee?

A So far as I know the same state of affairs as exist at present, has existed ever since I have been acquainted with the drainage outlets of our City

Q That is about how long?

A About 31½ years. We of course have done the work since that time, the drainage canal work

Q What was it that rendered it necessary to do the drainage canal work?

A. The last Act-Ad drainage or outlet from our City was very poor. And one idea was to give the flood water in winter season a chance to pass away more rapidly; as it did last winter for instance, much quicker than it did three years ago. The idea was to improve the drainage

2. To give the flood water you say, to pass away more rapidly? A That was one of the intentions. Also of course, to improve the whole water drainage

2 Why was it at that time necessary to improve the drainage over what it had formerly been?

A After the high water of 1878, the old drainage canal immediately below the City Starting from a piece above the river side road and from that down about probably a half a mile

was filled full with sand that had come in to the level of the grade; that is, sand and sediment. Of course it was necessary to take that out.

2 How far down the river did you find these deposits of sand rendering it necessary to improve the drainage?

A. That was about half a mile below the Riverside Road. That would be probably 3/4 of a mile below the City.

2 Where did the water come from that filled up that tule there?

A. During that season.

2 Yes, 1878 and other seasons.

A It came through the Lovedale break; that is the greater part of it. Of course a little was pumped over from the City, over the levee

2 From the Sacramento River?

A From the Sacramento River

2 What kind of the year was it that the Lovedale

break occurred?

A I think it was some time in February. I was not in the City at the time, but my recollection is that it was sometime in February that I heard of the break

Q When the gate fell up from the pumping out of the City is it not true that the water instead of running out of the City through its ordinary drainage channels, rushes back into the City from the tides below?

A It would unless obstructed by placing gates in the sewer or openings

Q When that water is up in that way, that is, when it has got over the sewer bank and filled the basin, the drainage is absolutely destroyed is it not?

A It is

Q How much did it cost the City of Sacramento

9369

& construct this improvement & the drainage or to make the improvement you have spoken of?

A. The work on the drainage canal on "J" Street so far as there has any work been done, & estimates each thing, when I made a little estimate of it for some cases, was about $30,000.

Mr. Catlin. The expense that was incurred?

A. Yes. That was the cost of the drainage canal, the work which had been done by the City

Q. Up to that time?

A. In the last 3½ years.

Mr. Hunt. Do you know whether or not prior to the filling in of the bed of the river and other streams with debris, the water ever got south of the J. Street levee, so as to obstruct the drainage of the City?

A. I do not know very

much about the original condition of affairs here except in a sort of indirect way

Q As a matter of notoriety is all you know about it?

A That would be the only way I suppose that I am acquainted with the facts. Going back as far as 6 or 7 years. I came to this City about 7 years ago

Q You spoke of some pumping, pumping water from the City, when did that occur.

A It has occurred two different times in my own observation

Q. What water was it that they were pumping from the City at that time?

A It was the rain fall, the sewerage and the sipage.

Q What proportion of that according to your information was sipage

Mr. Cobbin We object to that as not at Cross-Examination

9371

Mr. Hart. What water was it that they were pumping at the time you mentioned?

A The time that I mentioned? The question that was asked me if I recollect right now, what those pumps were constructed for

Q Well, I will ask that question: What are they constructed for?

A They are constructed for the purpose of pumping from the City the rain water, sewerage and sipage

Q Where over the sipage come from that they pump out

Mr Carlin We object to that as not in Cross Examination

The Court They have not made him an expert on that

Mr. Hart I will ask you where this 457,704 gallons that were discharged from the boiler came from?

A. Well I believe that the whole of that amount was pumped into the city from the water-works. It was at a time when there was no rain, the rivers were not high enough to cause any sipage and it could have been little less than that, that is pumped into the City.

2. How deep was the water at the point the pumping was going on at the time mentioned by you in answer to Mr. Battin's statement?

A. The water from the sewers — let me understand that question please?

2. You stated to Mr Battin that a pump had been constructed and that some pumping had been done

for the purpose of discharging water from the City, testing the pumps, and I ask you how deep the water was at the point from which that water was being pumped out?

Mr. Luttrell How deep in the canal?

Mr. Hart- Wherever it was.

A- About a week previous to starting the pumps the gates were opened into a lake that is called Duck Lake, which is 5 or 6 blocks in length and half a block in width probably and at the time we commenced pumping I suppose the water in the lake was 3 or 4 feet deep.

Q- What lake is that?

A- It is what is marked as Duck Lake on the old official map of Sacramento City.

Q- What street is that on?

A- At the point where we

were pumping — it was 8th and Y.
2- Shall whether you know where the water in that lake comes from?
A- Well at that time it came from the sewers, because we turned our sewers in to it. There was a little water in the Lake before we turned the water in It was perhaps a foot in depth.
2- Where did it come from?
A- Well it was running from the previous season
2- Do you know how it came then?
A- It came then from the rains and seepage I suppose. I do not know how else.
Mr. Belcher I object to an inquiry into that subject because it is not in cross-examination.
Mr. Hart Do you know what it is that has hitherto impaired the drainage of

9375

Sacramento City and has rendered the further construction of works and the improvement of works necessary?

A- It is the lack of fall.

Q- What if anything is there that has aided in impeding the progress of the water out of the City South?

A- The filling of the basin below the City with the water that comes in from the plains and the silage that comes from along the river bank between here and Freeport and the deposit of sediment in the upper end of the drainage canal from the material flowing in the sewage

Q- I will ask you know whether or not the drainage of the City has not been greatly injured by the filling of the bed of the Sacramento River and also by the filling of the tules and basins below the J street levee?

Mr Belcher That is objectionable as not being in Cross Examination. There is no evidence as to the filling on the part of the direct Examination and nothing was said about the Sacramento River or its filling nor about what had effected the drainage but the only effort was to prove by him the exact condition of things and his testimony was direct simply to such facts as he found there and not as an expert at all.

Mr Hart This witness showed that he was an expert and he was examined fully in relation to the drainage of the City and the works that have been constructed and the fall and the effect of the high water in destroying the drainage and I want to account for that so as to show that that which they have attempted

to prove as a defense in this case is a thing which they themselves have caused and is not only not a defense but on the contrary it is a thing of which we may complain

The Court I do not understand that this witness has been enquired of about that. He has been asked as to what he saw and what he did and the measurements he made and not as to any fillings at all

Mr Harr This witness has testified that when the tide is full of water there is no drainage and he went on to show that the water came up on the levee. I want to know why that was so. I want to know whether that is from natural causes and I want to know whether it is not due entirely to the Seipage from the River and the filling up of the

bed of the River.

The Court Anything that you may have seen you may tell but not your opinion. Anything you have seen or Know you can tell but do not give any opinion

Mr Hart Answer as to anything that is obvious to the senses then?

(The reporter read the question)

Mr Belcher The Court then overrules the objection.

The Court So far as that he can tell anything that he saw but he cannot give a mere opinion upon it.

A I can only say that I have seen this; I have seen the basin below the City filling with water — from water that run in there from the plains. I have seen the seipage water running down from

the levee along the Sacramento River into this basin and I have seen—

Mr Collins (interrupting) At what point?

A Well immediately south of Y street for three or four miles, four or five miles along the whole length of that portion of it and I have also seen that during the time that the water was highest it came in the fastest and that it came in faster in 1881 when the water was higher than it did in 1879-80 when it was not so high Those are facts that I have seen and I do not know whether they have any bearing on this question. Of course if it comes in faster it fills up the basin faster and obstructs the drainage quicker

Q Now then I will ask you whether or not there is a

Well located in the tules
Or in the basin South
of the R Street levee that
You have seen during times
of high water
Mr Hart I want to take an
exception to the ruling of
the Court on the last question
Confining the witness to
Matters that he has seen
Mr Collin I object to the
last question on the ground
that it is not in Cross
examination
Mr Hart I will ask you
whether or not you have
not seen the Seipage Water
running up out of a well
South of the levee

Mr Belcher That is not
in Cross Examination

The Court You may ask
that
The Witness South of the
R Street levee?
Mr Hart South of the R Street levee

Q. South of the R street levee?
A. South of the R street levee. R street was the point at which the pumping was done three years ago.
Q. Now then state to the Court the circumstances under which you saw that levee and that well and its condition at the time and the condition of the river?
A. The river was about at its highest. The well is located on the inside of the levee, just at the foot of the levee. It is one of these bored wells and the pump part was taken off and nothing was in view except two or three feet of the piping that stick up out of the ground. At the time that the river was high, the water was running out of this well and discharging down into the ground, where it ran away into the basin below. When the river fell that well ceased to run.
Q. About what sort of stream was running up out of the well at that time?

A. The tube was about four inches, if I recollect rightly, in diameter and there was quite a strong stream. Of course I could not say how much would be discharged, because I made no measurement of it. I simply observed it.

Q. Did you ever notice that well at other times, when the river was not high?

A. I have noticed it frequently — passing there during low water; there is no water flowing from it whatever.

Q. Is there any water visible, except when the river is high, in the well?

A. I never went and looked down in the pipe; but there is none visible, standing on the top of the levee; and there is none running out of the well whatever.

Q. Now, you spoke of seeing sipage water coming from the river through the levee — through what part of the levee was that?

A. Well, it was on the side of the levee, little places where

it would be oozing out like. There would be a small ooze, and down towards the foot of the levee there would be a little trickling stream running away, and some distance from the levee, perhaps, there would be quite a little stream. I have noticed in places, where there was a ditch running away from the levee, that there would be a considerable stream and the further it got away the larger the stream would become, as additions seemed to be made to it from underneath.

2. The further those went from the levee the larger the stream would become?

A. Yes sir.

2. Why is it that these sewers are constructed with one side unprotected?

A. Those sewers that are constructed in that way, were constructed —

Mr. Guthrie. (Int'g.) Object to that.

Mr. Hart. He ~~has~~ is put on as the

man who constructed those and he was asked in relation to them and what objects in the construction of these sewers — what the object was, and what the scheme was.

Mr. Cathin. I did not ask any such question. I just asked if the old sewers had no bottom to them.

Mr. Hart. I asked why they have no bottom.

Mr. Cathin. I object to the question as drawing from him his opinion as to the object of it.

The Court. I do not know whether that would be an opinion, if he knows the object.

Mr. Hart. You know the object?

Mr. Cathin. I object to that because that is immaterial.

Mr. Hart. You examined about this for the purpose of drawing an inference, and I have a right to cross-examine him and show fully.

9385

Mr. Cathin. I did not ask his

inference.

Mr. Hart. I do not want his inference. I ask if he knows the object with which the city ~~had~~ left those sewers without bottoms.

The Court. I think you may ask him that question.

Ex. Mr. Catlin. Note an exception.

The Witness. Well, as to the wooden sewers I can not state what the reason was for making them in that way except to give my opinion. There have been no wooden sewers constructed since I have been engineer.

Mr. Hart. As to the brick sewers?

Q. And there have been none of them constructed since I have been engineer and I only know from what I have been told why they were constructed in the way that they are.

Q. You do not know then?

A. I do not know it from my own personal knowledge. Those, that had to do with the building of them, have told me their reasons for doing

it.

Q. How deep were those sewers from the surface of the ground?

A. Through the high grade they are something like 12 feet down to the bottom.

Q. How deep are they through the low grade?

A. Through the low grade there is some difference, varying from 3 to 6 feet.

Q. Do you know what effect the stoppage of the drainage through those sewers has upon them?

Mr. Catlin. That is calling for an opinion.

Mr. Hart. No it does not.

The Court. If he knows he can tell.

A. Well, after the flood of 1878, and again after the last winter's flood, during which time the discharge through the sewers was very little, there was no current whatever to wash out anything that was deposited therein. More particularly after the flood of 1878, those sewers were almost

completely filled up at the lower ends with deposits of mud.
2. Of what?
A. Mud; such matter as flows in sewage; and when shovelled out, it had the appearance of mud.
2. What was it in fact?
A. It was a sort of sludge, they called it I believe.
The Court. The effect of the stoppage was what was asked you;
A. It was in fact the washings from the street principally.
The Court. That was found in there?
A removing the heavy ruins that is principally what fills the sewers?
2. Did the debris or the sediment or the mud that you found there emit any smell?
A. Yes sir, it did.
2. Bad?
A. Very bad indeed.

Re-direct-Examination

L. F. Bassett

By Mr Cutlin. 2. You say that after

the Lovedale break in 1878 that the drainage canal filled with sand at certain points?

A. Yes sir.

Q. After the water was turned off that pond was cleared out, was it not?

A. It was cleared out as soon as zoned after the water subsided.

Q. Was it not the obstruction caused from the fact that the whole of the bottom below Y street was overflowed clear above the level of the drainage canal?

A. Well, the obstruction, at this particular point, was caused by the sand-bars or sand deposited, that formed opposite the Lovedale break, that spread right across the canal.

Q. Did not the water also spread over all that country and cover the drainage canal?

A. Certainly.

Q. Did not that obstruct the flow of the drainage canal?

A. Certainly, it did; most assuredly.

Q. Then this sand that was deposited there, was a temporary obstruction; was it not?

A. It was an obstruction both while the water was up and again after the water was down until we shovelled it out.

Q. Until it was removed?

A. Yes sir.

Q. It was promptly removed as soon as the water subsided low enough to permit it to be done?

A. Yes sir.

Q. That was the same case in 1880-81, was it not — was there not an obstruction then?

A. Not from that cause.

Q. Not from any sand.

A. No sir.

Q. The break in the levee was lower down then?

A. Yes sir.

Q. Down at what is called Fern break?

A. Yes sir.

Q. And none of the sand or debris from the river, of that break, got into the drainage canal?

A We never have none of any trouble from that source. I have not been there to see for myself, but we have not had any trouble from it.
Q. Now, you saw this stoppage below R street, you saw the water oozing throug the levee. That was at the time when the river was at its highest flood, the Sacramento River?
A. Well, it was at a time when it was from 22 to 26 feet.
Q. But that was during its highest? A. It was when it was high.
Q. 26 feet is about its highest, is it not?
A. 26½, I believe, is the highest.
Q. Now, you saw on the inside of the levee some oozing water which, when gathered together amounted to a little stream. Now, how much did that proportion ultimately contribute to that immense flood of water that was in there from the breaks? A. Well, each

9391

little trickling stream did not amount to much, but there was of course thousands of them along the length of the levee.
2. How high did the water rise over the drainage canal down through from Y street to below Sutterville — how high did it come up against the R street levee in 1878?
A. Against the R street levee; I do not suppose I can give you any very close figures. The levee on R street, is not level; it has a sort of depression in it.
2. You were here in 1878?
A. Yes.
2. You saw the back water, from the Tule, back up against the R street levee, did not it?
A. Yes sir.
Mr. Hart. I do not know whether it was back water from the Tule or not, and I object to counsel assuming that point.
Mr. Gatlin. What was the water, that you say backed up against

the R street levee in the flood of 1878? A Well it was what we spoke of as back water. It came from the Lovedale break. It backed up from that portion of the city, because the break is below the city.

Q Was the tule basin all full there then?

A. Certainly it was.

Q. How high was that water over the drainage canal at Sixth street? A. At Sixth and R?

Q Yes. A Well, it would be from the surface of the water to the bottom of the canal, or the bottom of the sewer — it would be about 11 feet.

Q. And about how high from the top of the sewer?

A. Well, it would be 30 inches — as the sewer is at present constructed, it would be about 30 inches less. At that time there was a wooden box down further.

Q. Then suppose the R street levee

had not been there, how far would that water have backed up into the city, here?

A. Well, it would have backed up to L. street, or between L and M, all the way along from 3d. street to very nearly the whole length of L street, until you get out to old Sutter's Fort at high ground.

Q. Now, that was in 1878. Now, between 1878 and 1881 the Y street levee had been constructed, had it not? A. Yes.

Q. Well, how high did the water come up against the Y street levee in 1880 and 1881 from the back water?

A. It came to within about 3 feet of the top of the levee, that section of it between 10th. street and the river and two feet on the other part, east of 10th. street.

Q. At 10th. street there was a higher point comes in?

A. That is the Cemetery Hill.

Q. A part of the Cemetery Hill

Ridge?
A. Yes sir. That part on the east is built one foot lower than that on the west.
Q. Now, how far did that water, or how far did the water back up then in 1880 and 1881 in the city?
A. In the city?
Q. Yes.
A. That is, the water inside of the city that was not pumped out?
Q. Yes sir.
A. Well, in one or two places it backed very nearly up to M. street, between [illegible] on the surface of the street. I expect in some of the low lots it was a little, and north of that it was not, over any portion of M Street that I am aware of.
Q. Where about is this well situated, that you spoke of that you saw overflowing?
A. It is between D and E streets.
Q. How far from the levee?
A. Well it is right at the foot.
Q. Of the Sacramento River?
A. I suppose about five feet out from the foot of the levee.

2. Close to the base of the levee?
A. Close to the base of the levee.

Recross Examination
of
L. H. Bassett

By Mr. Hart. 2. You say that the back water backed up to M and N?
A. On 5th. street, on 5th. and 6th. streets.
2. Was that back-water?
A. Well, it was not back-water, the same as that outside of Y street.
2. What water was it?
A. It was the rain or sipage water; that that was pumped into the city?
2. Rain or sipage and that pumped into the city? A. Yes sir.
2. Where did the sipage water come from?
Mr. Catlin. I object to that?
Mr. Hart. I have a right to examined him on that.
The Court. We all know what he paid. Answer the question?
Mr. Belcher. Note an exception.
The Witness. Well it came from

Ex. 9396

various directions, coming from the Sacramento and from the American Rivers.

Mr. Hart. Do you know that it comes from the Sacramento and American Rivers, sipage water?

A. I do. Yes sir.

Q. How do you know it?

A. From my own observations?

Q. What have been your observations on that subject?

A. Well, taking the north side of the city from B street south and east of 7th. street, during high water in the American River first, when the water first rises, there is no sipage visible; it is all dry; the surface of the ground there is perfectly dry and for a considerable depth. After the water has been up sometime, this ground gradually becomes saturated with water, until finally it becomes so completely saturated that it runs down the gutters on to the sides of the streets, where they are open and unobs-

-structed; and as it passes along, it becomes larger and larger, and it accumulates from the different sides.

Q. Coming out of the ground?

A. Coming out of the ground, yes sir.

Mr. Catlin. You say coming out of the ground in the gutters?

A. You see the ground perfectly saturated after the river has been up for several days. After the first few days you see nothing of it; perhaps the ground is perfectly dry, and in a few days it becomes completely saturated with moisture, the lince becomes saturated; and after the river stays up for quite a length of time, this saturation will extend for several blocks in distance, sometimes nearly across the whole width of the city. During seasons when there is no high water in the American River, we do not have that seipage, we do not have that same water.

9398 Mr. Short. Are there any other

evidences of it, in the city, be-
-sides that; besides seeing it com-
-ing out of the ground and form-
-ing streams as you mentioned.
A. Well, there is one evidence, that
to me, is the plainest of any
evidence that I have seen.
Mr. Cathin. You are asking his
opinion.
Mr. Hart. No, I am asking for
the evidence.
A. I will first describe that be-
-tween Front street and the
Sacramento River and between
R and S, I believe — it is between
R and T anyway. Between Front
and Second there is a large
and quite a deep excavation —
I suppose about 10 feet in depth;
and directly opposite, on the ~~other~~ east
side of Front street, and Front
and Second, there is another
excavation of about 2/5 of a
block of about the same depth.
Three or four blocks further
along there is another excavation
eight or ten feet in depth and
a quarter of a block perhaps

in extent.

Mr. Catlin. Those are below R street?

A. Those are below R street.

Q. Down in the swamp?

A. Then when the river first rises, when the Sacramento River first rises, I notice that this excavation begins to fill with water.

Mr. Hart. Which one?

A. The first one, the one nearest to the river. I will state that, during the summer season, that, as a general thing, becomes entirely dry. Then, as the river remains at considerable height, that excavation gradually fills. It is getting fuller and fuller. The other one on the other side also fills, but more slowly:—than the other one, still further along, fills very slowly: I suppose, perhaps not 1/4 as fast as the first one. There is a wooden box, a sort of wooden box-sewer or culvert connecting these, one with the other, and the last one with the drainage canal. If you will go to the first excavation, at

9400

the present time, you will find that the water, in that excavation, is somewhat colored.

Mr. Belcher. (Intg.) Are you speaking of what you have yourself seen or what you suppose?

A. I am speaking of what you can go and see for yourself.

Q. I am asking you if you are speaking from what you have seen?

A. I am speaking from what I saw.

Q. When?

A. This winter, last winter and two years ago. You will notice that the water, in the first excavation, is slightly colored, and very slightly tinted with the color in the Sacramento River. The next one is just barely perceptibly colored. Finally the upper excavation or the one nearest to the river gets filled to such a height, that it runs through the box, that is under the street, and into the other. When that becomes filled, it then runs on through into the next excavation; so that there is a

ditch right along from one to the other, that the sipage water in the soil —

Mr. Belcher (Dntg.) I object to that. He can state what he has seen and he need not draw and deductions from them.

The Witness: Well, I have seen this.

Mr. Belcher. You need not draw any deductions unless the Court directs you draw them.

Mr. Hart. Q. What did you see there as to the elevation of the water in these three places.

The Court. He saw water running into the other.

Mr. Hart. I want to know which one the water is highest in?

Mr. Belcher. I object to that. He has already stated which was highest and it is simply a repetition.

The Court. I understand that.

Mr. Hart. Q. How long does that remain highest, in the water nearest the river?

A. Until the water gets so that it can run through into the second one.

Q. Does the height of the water fall gradually, as it goes from the river, or fall abruptly?

A. As it passes through this culvert?

Q. No, the sipage water? Is it highest nearest the river or highest as you go from the river?

A. It is highest nearest the river.

Q. Does it fall gradually or abruptly at any place?

A. It falls gradually; it seems to assume a slope underground, the same as I have observed in other places; but I had no reference whatever to this.

Q. How deep is the sand below the R street levee in the tule, the sand that was made by the Lovedale break?

Mr. Belcher. I object to that. That is not in cross-examination, whether there be one foot or 20 feet.

Mr. Catlin. Let him answer it. There is no sand there. Witnesses here testified that it has been removed, as soon as the water subsided.

9403 A. There is in the fields adjoining

the drainage canal, I think where the drainage canal runs.

Mr. Catlin. He asked you if there was any in the drainage canal?

Mr. Hart. No sir. I asked in the lines that came in from the Lovedale Break?

Mr. Catlin. We object to that. That is not in cross-examination.

Mr. Hart. You were trying to show that the water that came from the Lovedale break caused this thing. I want to show that the water is raised by the amount of sand deposited in this basin; so that less water is required to obstruct this drainage than was before. I want to show it by this witness, and it is your witness, and I want to be allowed some examination.

Mr. Catlin. I object to your going into it, because it is not cross-examination. It was not my examination. I did not touch those subjects at all with this witness.

The Court. I think I will try, and restrict that. I do not want to open that question again, about the sands in the Lovedale Break.

9404

Mr Hart I offer to prove now that the sand in the basin below the levee has filled up to such an extent as to materially increase the height of the water, which operates as an obstruction to the sewerage and drainage of Sacramento City — by this Witness

Mr Belcher Our objection is that it is not in cross examination

Mr Baldwin We do not object to the Counsel offering it as original testimony but it is not in cross examination

The Court I think I will sustain that

Mr Hart We except.

Mr Baldwin Q These three excavations you have described one on the R Street levee and between the two that you first described there is simply

a street in width?

A yes

Q Do you know whether the water in the one on that side nearest the levee is higher now than it is in the other one?

A I cannot state just at the present time because it is not high enough to run through and I have taken no level. I know it is however

Q Just answer my question. You do not know whether it is higher. Do you state that the water on the East side of the street is at all dissolved at this time or was at any time within the last three days?

A I have not been there within the last three days

Q Well when were you there last? A Oh I suppose a week or ten

days ago

Q Was it discolored then?

A Yes. Well it was discolored so slightly that I would not really know.

Q Why? Was it discolored at all? A Let me say what I was going to say It was discolored so slightly that I would not really know. It is discolored so slightly, it has a tinge but it is so slight that I cannot say whether it is owing to the water which comes from the river and brings that to the river, or whether it gets it from the banks or what it does get it from

Q Do not the water on the excavation on the West side of the street very badly discolored, or was it not when you saw it a week ago? A It was quite badly discolored

Q Do you not know as a matter of fact that that discoloration comes from the drain of that winery right on the bank of that excavation, on the west, and from the Gas Works on the South?

Mr Hart I've object to that as leading

Mr Catlin It is leading but I have a right to lead the Witness I will state that I do not know absolutely that there is no drainage from the winery discharged into that, but I know in the Summer season that excavation becomes dry; and that it should become dry with water discharging into it I do not believe

Q That is not answering my question at all. I ask you whether or not there was any drainage into that excavation

block from the winery and Gas Works?

A I cannot state. I am positive there is nothing from the Gas Works. I cannot be positive there is nothing from the winery but I am sure there is not

Q How near are the Gas Works to it? A About a block

Q How do you say that you know that there is no drainage from the Gas Works to that?

A I say I am very positive of it. I do not know it but I say I am very positive of it.

Q You are merely expressing it as a positive opinion? A Well you might call it that perhaps

Q You do not mean to say that you know that there is no drainage from the Gas Works there

into that pond hole?

A I do not know it

Q Will ask you whether you are certain that the Gas Works are distant a block from here

A It was three quarters of a block or it may be a block

Q Will you swear they are situated 100 feet from there?

A Will

Q State then from your knowledge how far the Northerly bank of the Gas Works is from the edge of that pond hole?

A I never have measured it and I never have looked at it with the intention of deciding how much the distance was, but I should say that it was from a half to two thirds of a block. That would be from 200 feet upward

Q I will ask you how

long it has been since the river rose, since the fine rains of this season? How long has the river been up?

A I cannot state. I did not make any memorandum at the time the river began to rise

Q Has it been as much as six weeks?

A I think so

Q Do you know how high it has been? A It has been up 15 and 16 feet I believe. I have not been there to see it

Q Do you know of ~~the~~ seepage that has come into the City since the river rose?

A Not unless there is seepage at that point? If that is seepage there has been: if it is not there has not been

Q That is the only seepage that you know of?

A That is the only seepage

I have observed this season

Q You have not observed it in any other place except there? And there you suppose it comes from the rivers? A yes

Q Are there any other reasons for that supposition than the fact that those two excavations are pretty near to the levee?

A yes. The fact that they never rise until the river rises

Q Did they rise the moment the river rose or within a week or two weeks after the river rose

A The one that is nearest the river rises soonest

Q And this year when did they first rise?

A I was not making observations for the purpose of determining anything exactly about this thing. I only noticed it from time to time. I never

thought of having it brought up here

Q Now in speaking of this amount of water which was in the City, which the Attorney General asked you about, some of it you say came from Sipage You recollect when Carle Howly were pumping the water out do you not?

A yes

Q How much water was discharged into that from Burns slough at the time?

A A very large proportion I should think; at times perhaps a half

Q I will ask you whether or not at some periods of that time, from your observation, Burns slough did not discharge as much in there as Carle Howly's pumps were pumping out? A Well I think not. I made no accurate observations

Q In proportion, how much would you say?

A I do not know as I observed it in such a manner that I could make any definite answer.

Q What do you call seepage water is that water which you have observed as oozing out of the levees when the water in the rivers, both the American and Sacramento is very high?

A Yes that that comes from or through the levee itself, and also immediately inside the levee for some distance. You can see as the river rises and becomes high on the levee it gradually extends and extends.

Q What becomes of the rain water? Does not that contribute?

A Contribute to the drainage of the City?

Q Yes

A Certainly

Q Where does this 26 inches – a little over 2 feet – of rain that fell in the City go to?

A Part of it went into the ground, part of it was discharged through the drainage outlet

Q During that time when the water was in the City and Carle Horowly were pumping it out did not we have heavy showers?

A yes

Q Do you recollect what fall there was during some portion of that time? the highest in any one day for instance?

A No I do not. I know there were considerable rains quite heavy rains

Q Do you recollect when we had any shower where it was noted that an inch of rain fell in 2 hours?

A I do not recollect of any

9415

such instance

Q I will ask you whether or not the bulk of this seepage is not the result of the saturation of the surface here during the rainy Season, from the rain fall in the City saturating the surface and accumulating in the soil?

A That would not properly be called seepage - the rain falls - though it undoubtedly adds to the moisture in the ground

Q You do not call that seepage, in your view of what you call seepage?

A Certainly not. Rain fall would not be called seepage. I would not call rain fall seepage

Q From your observation and what you have stated what proportion of this water which overflowed

the lower part of the City and which was heed back by the R. Street levee in 1878 and by the Ry Street levee in 1881 and which was pumped out attempted to be pumped out, had accumulated from the rains which fell on the purpose ground of the City & objected to and withdrawn

Recess until Monday morning January 9th at 10. A. M.

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State of California
vs.
The Gold Run Ditch and Mining Company

Morning Session
Monday
Jany 9th/82

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Winfield J. Davis
Official Reporter

In the Superior Court
of the State of California
in and for the County of
Sacramento

The People of the State of California
vs.
The Gold Run Ditch and Mining Company

Monday
Morning Session
Jany 9th 82

Testimony of Washington Fern.

Called for defendant. Sworn.

By Mr. Catlin.

Q. What is your occupation?

A Farming.

Q. Where do you reside?

A. Down the river four miles.

Q. On the Sacramento River?

A. Yes.

Q. Which side? This side?

A. Yes.

Q. How much land have you there on the river?

A. 126 acres.

9418

Q. What is the width of its front on the river?

A. 36 rods and 12 feet.

Q. What is its width in the rear?

A. 92 rods.

Q. About what depth is it from the river bank?

A. 1¼ miles on the one line and a mile on the other.

Q. About how many acres of that is what is called high land on the bank of the river?

A. Right on the bank of the river, what I call the orchard, is about twelve acres. Then my house stands back of that and there is about 20 acres in the next field. The rest is what we call tule land.

Q. Altogether about 32 acres of high land, then? A. Yes

Q. The balance is tule?

A. Yes.

Q. How long have you occupied that land?

A. Ever since 1852, September 1852.

Q. State whether you have been farming there ever since.

A yes.
2. State whether you have wells on that land?
A. I have.
2. What kind of wells are there?
A. Bored wells.
2. How deep do you bore for water? A. About 18 feet on the high ground close to the house.
2. When did you first have those bored wells? How far back was the first bored well that you constructed?
A. 1858.
2. What kind of water is it?
A. Hard.
2. What do you use it for?
A. I use it for cooking and drinking.
2. Have you noticed whether that water comes any nearer the surface than it formerly did?
A. No. I can not tell that because it is a bored well and it is well covered up tight to keep everything out of it.

Q. Whether it does or does not you have not observed and can not pay?

A. No.

Q. The river water is what you call soft water, is it not?

A. Yes.

Q. State whether your area of the high land, that is out of tule, ~~is~~ has any greater or smaller than it formerly was — this proportion of high land, which you spoke of, is it any more or less than formerly?

A. Any more or less than what?

Q. Than it was in 1852, '53 and '54, any more or less in extent?

Mr. Cadwalader. Do you ask him whether there is more tule or more high land?

Mr. Catlin. Whether the area; that is, the extent of the high ground is any greater or any less than it was in 1853 and 1854 and along there?

A. Do you want to know whether or no it is filled up any more?

Q. No, that is not the question now. Do you have more or less of that high ground than formerly?

A. Oh no; I do not know as I have.

Q. About the same?

A. About the same.

Q. State whether there was ever a break in the levee at that point? A. There was last winter.

Q. How high is the levee in the front of your land?—it is ordinary high?

A. About six feet.

Q. And what breadth at the base and on top?

A. About 30 feet, on the base, and four feet it is calculated to be on the top.

Q. You had a break last winter?

A. Yes.

Q. Was that the first time you had a break there?

A. Yes. Except 1862; and we had no levees hardly then, only ditched up-like a couple of feet.

Q. I am referring to a period since the construction of that levee. That levee was constructed after 1862, was it not?
A. Yes; after the 1862 flood.
Q. From that time on, up to 1881, you had no break?
A. No.
Q. State whether it broke more than once last winter in your place? A. It broke a second time. The first time, where they lapped sacks against the old levee; they did not build up the old levee at all but simply laid the sacks up, and it washed away the sacks and the old levee again:- It was built up with sacks filled with dirt and earth and where they lapped them against the levee, at the ends, it broke away there again and they had to fix it up again.
Q. How much of the river, of the ordinary flow of the water in the river, run through

the break on your land?
A. Went through?
Q. Yes? A. There was 335 feet of it broke right through in which the water ran.
Q. What proportion of the water, flowing down the river, turned in and went through the break over your land?
A. It is that width and from two to nine feet deep. I saw it measured there many times. Folks come down there wanting to take the contract to fix the break, and we had poles with the feet marked on them.
Q. What part or proportion of the river went through there?
A. Well, that is as nigh as I can tell. It was so wide and so many feet deep. I cannot tell how much went through; I can not tell any further than that. I could not tell what proportion.
Q. State generally how long the water continued during

that winter, taking both the breaks into consideration?- How long was the water running there before it was shut off by the rebuilding of the levee?
A. I think it was in the neighborhood of six weeks. That is while they were working on it and all. You see, they had to work a good while driving piles before they began to put in a sack dam:- That is what I mean: about six weeks from the time it broke, I should judge, until the time they got the water shut out.
Q. That is including the two breaks?
A. Yes. The last one was not so big. It took but a little while to fix that up.
Q. After the work was closed how long was it before the water drained off on your land?
A. I do not remember exactly. But the land was not fit to use the whole summer. I did not use it and could not use it

When I could plough it or get on with a plow it was a little too wet and then got too dry. It was so late in the summer that I could not use it.

Q. Did you raise anything there; did you cultivate anything there last summer?

A. Not down in the lowest land. I did in the neighborhood of my house - up in the orchard there:- It went right down in my orchard. It was not long there at all.

Q. Did you cultivate any portion of the deposits which were brought in by this overflow?

A. Yes. There was a place up in front of my house, where it came in ~~front~~ to two feet deep and that I planted sweet potatoes on and some in the orchard.

Q. You planted sweet potatoes on a portion of this deposit which was about two feet deep?

A. Yes.

9426 Q. With what result?

A. Very big.

Q. What?

A. Very large potatoes, large as the Virginia kind of sweet potatoes.

Q. A good quality?

A. Oh, yes.

Q. How was it with the Irish potatoes?

A. They were not so good. They were planted in the land that was washed out. The land was well plowed and planted before the water broke in and it took that down to the hard pan, right off with it. The water took it all off and what I had left was new ground, plowed all over again; nothing was run in it of any amount — may be an inch or two.

Q. State what deposits were carried in the tule portion of your land by that overflow: To what extent and depth?

A. From eight inches — to go to the stream, in one corner, for instance — from eight inches to three feet, may be as high as four feet. But, on an aver-

9427 -age, it ran from eight inches

to about 2½ feet.
2. How much of it was covered to the depth of 2½ feet and what proportion of your land is that deposit on?
A. That is on my back, tule land, as I call it. But I keep it plowed up every year. There is no tule growing on it, on what I call the 24-acre lot and the 40-acre lot. But I have 30 acres behind that which I let go to the tule, which is wet.
2. What proportion of your land does the ordinary tule grow on? Over how much of it?
A. I grow up over all this land, the sediment is now on; if I did not plow it up every year. I keep it cultivated and keep it down. But as I said I keep those fields down every year. It will take two or three years for them to grow up in the tules again.
2. Is there not a good deal of tules standing there now?
A. There is a little in one

corner of what I call the 40-acre lot but not in the upper one. I use that for a hop field, the 24 acres.

Q. Had you any portion of this land, which was covered with the deposit of sediment from the river, sowed to any crop this last fall?

A. Only about an acre of it which I put in barley last fall very late.

Q. State whether this deposit upon this tule land is an injury to it or not?

A. I think it is not myself. I would like to have a good deal more of it.

Q. State whether you have observed, of late years, whether the drainage or seepage water, as it is sometimes called, from the river is greater or less than it was in early days.

A. I do not know that it is. The water does not begin to seep in until the river gets up so high.

9x29 Q. How? A. When the

river gets 18 or 20 feet high, then it begins to sipe in a little.
2. Where does that come from?
A. From the river.
2. Well through what portion of the soil?
A. Oh! Through the banks.
2. Does it come through the levee? A. No. It comes under the levee.
2. Under the levee! Do you mean where the levee rests on the original soil or below the original surface?
A. Below the original surface. There is now and then a little spot where it came through on the top of the original ground, where the levee lay. There are spots where it comes through in some places; there is one little corner of my land, a very small corner, it does not amount to much. On the west of our pocket there is a great deal of it.
2. From what sources does

9430

most of that sipage water come on your land?

A. The sipage water comes from the river; but we have what we call back water, which comes in from Willow Slough: that comes right down and goes right in over on us. And the Sacramento Drainage Canal comes down. It does not come on my land but it comes on the land of Lee which joins mine; and when it runs on him, it comes in ~~of~~ over me.

Q. That is to the eastward?

A. Yes.

Q. Where does Willow Slough come? A. It comes from between the Freeport Road and the Lower Stockton Road.

Q. From what country or what land? A. From the plains.

Q. To what extent does that bring water in there?

A. More than comes down the Drainage Canal. I have seen it there 40 feet wide and from one foot to four or six

feet deep sometimes. That has been when there has been a big storm, a big rainstorm.
2. With how much of a current?
A. In the drainage canal they drew that dirt over on the west side to make a levee to keep it off, to keep the water from going over in what we call the pocket; and when it is up the current comes down swift enough to wash that away.
Q. Is there a lake in the rear part of your land?
A. The lake is this side, the big lake; Hooker or Lyndon Lake.
Q. The lake is sometimes called Lyndon Lake and sometimes called Hooker Lake?
A. Yes.
Q. How near is that to your land? A. Quarter of a mile.
Q. State whether your lands are affected by that lake or not?
A. I do not know that my land is unless it overflows. If it overflows of course it

does affect my land.

2. State whether it does overflow at times or not?

A. Yes it does.

2. Do you know anything about whether the tide water from below, coming up, comes up to that hight, higher than it formerly did?

A. I can not say so much about that of late years. It use to come up there I know, because I used, years ago, to draw my washing water from the river. I kept a sled with a barrel on it, and once in a week we would go and get water, soft water, to wash with. Then I used to notice that sometimes the river was higher than it was other times.

2. I am not speaking of the river but Snodgrass Slough and Beachy Lake — though the lakes backing up.

A. Oh, in the winter time the water mostly has run up every year and would, ever

since we have had the canal dug.

Q. Run up from where?

A. From Beachy Lake.

Q. Up this way?

A. Yes up in the other Lake.

Q How far would that water extend to? A. I do not know any further than it come up in the lake. It would come clear to the city, I suppose.

Q. Come up into which lake?

A. In the Hookerlake.

Q. Every season except one, you say:—What one was that?

A. That was two years ago. We thought we were going to have a dry season until April. In April we had 11 inches of rain. It did not run up that year, but the water ran down until April, until the big rain came: then I do not know how it run. It came all over, that rain did. But I kept watching that, that year because there were parties cut the back levee to let

the water out of the pocket ran into the lake. There was a foot fall from the tule from the lake that year. I went over to see about it, to see what they were cutting that levee for. I found there was a fall and did not object to their cutting it to get the water out of the pocket.

2. What levee was that?

A. We have a back levee to keep the water from Willow Slough coming down on us and they continued the Drainage Canal along. We have a levee built at the head of the lake which connects with the Drainage Canal below us. The Drainage Canal stops at Suttenville, you know, and then does not start again until it goes on Gees' ranch; that is the lower end of the lake.

2. Of Grundon Lake?

A. Yes. We formed into a dis-trict some five or six years ago and spent $10,000 there

digging this canal through there two miles and putting the levee up on the west side of the lake. That is the levee I have reference to.

2. The object of that levee was what? A. To keep the water down; to keep it off; to keep it out of the pocket.

2. To keep it coming from this lake over to your land?

A. Yes.

Mr. Caldwalader. From going in the pocket?

Mr. Bathin. 2. State what you mean by the pocket.

A. It is like a horse-shoe down there with us.

2. Is it caused by a bend in the Sacramento River?

A. Yes. It would be 10 miles to go around it; but if you go across, you would strike it in about two and a half miles.

2. These levees broke last winter you say? State what was the cause of those levees breaking

A. It was caused by the gophers in my place and Mesick's for I was there when they broke.

2. Was that the only cause? Did the gophers dig into the levee only during that winter?

A. Oh, they are in them all the time; they burrow in there.

2. State what kind of a season that was for rain as compared with others?

A. There was more water last year, in the year it broke. The river was higher.

2. Do you know anything about Beachy Lake?

A. No, I do not. I only know it is higher sometimes a good deal than ours. There is more water in it; there is more influx to it from the plains. It rises higher than ours does.

2. State whether Grundon Lake, in the last few years, say the last 8 or 10 years, compares with its condition, say between

1852 and 1860, as to its level? State whether it is higher or lower?

A. Ever since the Lovedale break down here, about three years ago it has been higher. The water never seemed to get out down there; that is, as it used to before. The fall, before that Lovedale break, the Chinaman that was working on the ranch right adjoining me, right on Sees ranch, had a well dug. It was nine (9) feet deep for I went down and measured it, just for curiosity, to know how low the water would get down in the tule in dry time. He had to go down 9 feet to get water in the tule, in the fall of the year. He kept following that down. He was about a mile from the river. That was all the water he could get this way.

Q. The question I wanted to ask you was, what are the general causes for those lakes being higher in recent years than formerly?

9438 A. Well, I do not know.

2. What are the sources of supply?

A. I do not know that there are any more than what I have said. It seems in the last three or four years, the lake seems to be higher. The drainage canal ought not have been dug if the lake was lower than it was last fall.

2 State whether there is any drainage in there of recent years that was not there in former years?

A Yes, the drainage canal comes down there.

2 Any others?

A. Well, the Willow Slough is there and people drain into it - Willow Slough from the lower Stockton roads. They drain everywhere they can into Willow Slough.

2 There is more drainage now than formerly into Willow Slough?

A Yes, a great deal more than ever was before.

2. Well some drain into the Tule Basin?

A Yes, some into the Lake

2 That is a part of the Tule Basin?

A Yes,

2 The lake is right in the middle of the tules, is it not?

A Well, the lake runs right ah to the Edge of the high ground - You know the high ground there - by Jack Rundons

2 You are speaking of the high ground to the East?

A. Yes. It lies at the Edge of that and goes out into the tules

2. I have you, Mr. Jenn since you residence there and in the construction of these levees - Have you ever seen any water oozing through the levee itself?

A I never have only where there were gopher holes made there

2. State whether you have observed the levees up and down

A Yes, I have been on them

9440

night and day watching them
Before the 1882 flood I was
upon the little levee and
when the Senators used to
come along at 2 o'clock,
we knew when she was
coming, and we used to
go along with shovels and
when the water was coming
over, and throw up the dirt
on the top of the levee to
keep it from coming away
— a steamer makes great waves
and throws the water over
the levee. At those times it
did, and at those times I used
to run along when the water
was clear up almost over
the levee. At 2 o'clock in the
afternoon or half past 2 we
used to throw up dirt where
the levee was quite low.

Q. I am directing your attention more particularly to the new levee, the one that is now there, that was built after the big flood of 1882?

A. They have been almost

as solid as can be Except the gopher holes which you can not find until the water comes up

Crop - Examination of Washington Fern

Mr. Cadwalader. Which way does your land slope?

A Out from the river?

Q Yes. A It slopes back.

Q What fall is there between that and the back land

A Probably about ten feet

Q How far is it from your front to your back line?

A 1¼ miles on one side and 1½ miles on the other

Q How far is it from your front line to the County Road?

A I should guess about 2½ or 3 miles

Q I mean the County Road down the river. How far is it from the river to the County

road? A What do
you mean?
Q From West to East?
A Well, one road runs right
through my place
Q How far is it from your west
line on the river to the County
Road? A Which County
road?
Q I mean the road the Pocket
road? A That runs
right through. It is about
5 or 6 rods that road
Q Your house is on a
mound, is it, not?
A Yes, on the bank of an
old slough
Q Much higher than the adja-
cent land is it not?
A Yes, a little higher. Con-
siderably higher
Q There was no water in your
house last year?
A No sir, not in house. My
house set up, it just came
to the floor.
Q How far is it from your
north to your south line?

9443

A How far is what?
Q How much have you on the river? A How much front?
Q Yes? A 3 rods and 12 feet
Q Are there any streams lying between you and the lake
A No sir, I am the furthest back of any one
Q Is there not a farm fronting on the County Road, west of you and east of you?
A There are farms all along there
Q But I mean on the East side of the County Road?
A Yes, there is a farm that adjoins me
Q How long has that place been cultivated?
A Well, the one that adjoins me?
Q I mean the one east of the County road, next to you?
Mr. Caplin Name the place
A The one right east of me, I used to own half of it
Q That has been cultivated for 30 years, has it not?

A. Ever since 1852 more or less. Mr Hooker and I put it in

Q Where did you dig your well, alongside of your house?

A Yes.

Q You have got some hard pan there, have you not?

A I do not know. We bored down but I did not notice. It is so that you can bore a well down 18 feet and not be bothered

Q That ground does not wash any? A Nosir, I do not think it does.

Q When the Garamento River came in there it did not wash any, did it? A Nosir, it left 8 inches up in my front yard, all through

Q It did not cutting down on the County road when it went across? A Yes.

Q Well, how much?

A Some places, 4 feet deep

Q. I mean as a general thing

445 How high is the bridge that

has been put over there?
A There is a bridge that has been put there where it is 18 inches deep, and there are holes in the upper side of that and in the lower side some. Some of them are three feet deep and some of them are four feet. The deposit would not average four inches but some places on the County Road it dug it out there 4 feet deep, that is to say, it dug out the soil there 4 feet deep and made holes there 4 feet deep besides
Q That is not what I ask you. I ask you whether the deposit between the County road — that is the place you have been speaking of — and the river is more than four inches deep?
A No sir. There is no deposit left there at all. It is a little further up towards my house. There was a little embankment
Q There is no deposit left

On your place except away back in the tules?

A Yes, there is.

Q About half a mile from your place? A I told you there was 2 feet. I did not tell you but I told Mr. Catlin that there was 2 feet of deposit in front of my house just where the road turns the corner.

Q That is not what I asked you. I asked you whether East of the County Road there was any deposit until you got down away into the tules, that amounted to anything?

A Yes, there it is a sandy deposit, on my place, and right East of me, and on my neighbor adjoining me right this way, and a little on the lower side.

Q There is no deposit within 1/4 mile of your house on the East? A Yes.

Q Not enough to interfere with cultivation?

A No sir.

9447

Q You plow would reach the old soil? A No sir! I told you that. I have got two feet of it right at the north of my house

Q That is over on the road — in your orchard?

A Adjoining the road just as you go past.

Q In the orchard?

A Not in the orchard, in the corner there

Q That would not be more than 1/8 of an acre?

A No sir; it was not very large, it was a low place there

Q You did not have to dig your trees out or anything of that kind?

A I did not have any. The Lovedale break killed all that I had there. I had some peaches there and it killed them all

Q Where did you raise the sweet potatoes at that place

9448 which is in sight from the

New bridge on the County Road.
Where did you raise those
sweet potatoes?
A I raised them at the
North Corner, right adjoining
the road before you get down
to the bridge — right at the
Corner as you go down.
Q There there was a very
light deposit
A It was two feet deep.
Q of What?
A a Kind of sand.
Q Slickens?
A no sir.
Q White sand?
A A Yellowish Kind of sand
Q Of What Character —
did it Crack?
A A Little Shadish Yellow
ish fine sand.
Q Did it Crack?
A no sir.
Q That soil you planted
to sweet potatoes?
A Yes
Q Sweet potatoes grow in
Sandy soil do they not?

A Yes
Q How many acres did
you raise of sweet potatoes
A I did not raise only a
few I only tried it for
an experiment. I did not
have a great many.
Q How many a quarter of
an acre?
A No sir I had six
Rows across the piece.
There was just a little
I tried to see if anything
would grow in it because
I was told that nothing
would grow in that sandy
land and I put this in
as an experiment and I
was telling around that they
done very nice over there
and they got me here but
I do not know how they
heard of it.
Q It got out through you
did it not?
A I was talking with some
of my neighbors who lived
on the other side. I asked

them how there sediment did
And I felt a good deal
of interest see what I could
do with that part of my
Ranch which was covered
up with slickens and sand
Q Were you anxious to show
that slickens would grow
something ?
A I was anxious to find out
whether it would grow
something or not.
Q You wanted to protect
your mining interests I
suppose
A No sir I did not care
anything about the mining
interests.
Q You say you had no
levees there in 1862 ?
A A little levee two feet
Q You raised large
crops on it before
1862 did you not ?
A Yes we raised Sweet-
potatoes there weighing
16 pounds.
Q It was the same way

in the Pocket was in not. You could raise anything in the world in large quantities in the Pocket before 1862?

A I shall tell it just as it was before the 1862 flood

Q I have asked you before 1862 you could raise stuff there before 1862
A Yes.

Q Onions what quantity did you raise to the acre?
A I do not know. One year Hooker and I had six acres and a quarter in but I have forgotten how many there were to the acre but there was lots of them.

Q You say the river bed is not filled up any in front of your place?

A I did not say so

Q You say you have no sepage water?

A No sir, I did not say that either

Q Well what did you say about that?

A I do not know. I know I did not say that because if I had I should have said what was not the truth

Q You have been nearly killed with sipage water?

A Such water not sipage water

Q Sepage water?

A Such water runs in there. It runs, as I tell you into willow sloughs and the drainage Canal.

Q When the water gets up onto your levees? or 3 feet do you have

any drainage water under them. And that you can see up on the levees

Q Now do you not as a matter of fact have a large quantity of seepage water.

A As I said before you cannot tell, because when the river is up so high there has been so much rain fall or so much rain has fallen on the plains and it is all sandy there and then it begins to run down. I have said twenty times that I would rather have the river break in on my place than to have the back water come in because it would leave a deposit there that I thought would fill up. There is no doubt but what there is seepage water in there.

Q You know they have had more trouble from pepuge water in the Pocket than any place else on the Sacramento River?

A Yes. But it will all caused by the breakwater, or else we would not have spent that ten thousand dollars in trying to keep it off. Q The river runs around the Pocket like the outside of a fan does it not?

A What

Q The river runs on the outside of the Pocket like the outside edge of a fan? That is the shape of the Pocket is it not? A The shape of the Pocket is something like a horseshoe as I have said

Q It is a good deal more eccentric than a fan? A It draws together — it draws togethe.

9455

a little more

Q You were speaking of gophers blowing your levee up?

Mr Catlin Q Did you say that the gophers blew your levees up?

A No sir

Mr Cadwalader Q Break your levees up? Before a break occurs in a levee you generally notice the water issuing from the base of the levee do you not? A No sir

Q For some distance inland? A Not on mine

Q I mean as a general thing when there are breaks - the water is first detected coming inside the base of the levee? A On my place, as I said, there was a little corner maybe 10 feet or 5 or 6 feet where it sized in between the levee - it looked as

9456

if it did at the base

Q Have you not noticed the water coming in say 40 or 50 feet from the inner base of the levees? A Not on my place it does not

Q Well, about the others.

A There is in some places as I said; the water seeps a good deal

Q Then they have to cut ditches leading from the levee do they not?

A They did cut ditches

Q To the tules? A Yes.

Q Are not there cross ditches leading from the tule every 50 yards from your place down to Freeport a distance of 8 miles? A Does not know. This side of the Pocket I know. On Judge Reed's, what we call Judge Reed's place I counted them there

and the neighbors wanted to stop it

Q Take Mrs Whitley's and the Portuguese places?

A On Judge Reed's place I have counted six little small ditches in certain seasons of the year

Q They are small ditches? A A plank generally. They lay over one plank

Q About 4 feet across and 4 feet deep? Also in some places I think there are two planks and some places but one. There is one bridge down on what we call the Pipes boys place that there are three or four planks

Q I am not speaking of where they cross the road but when you leave the levee Q There are lateral bridges running from the base of the levee to the bulk?

A They do not any of these ditches run up to the levee

Q They are close enough to catch the seepage water?

A Yes

Q The seepage water that comes in under the base of the levees?

A Yes

Q Have you any idea, where the seepage water comes under the base of the levee, how much pressure the water in the river is exerting in lifting the levee up? as compared with the power of resistance that the levee affords?

A I do not know anything about that or anything of the kind

Q You never made any estimate of that?

A I never supposed the water lifted the levee up. If it did I suppose

it would carry it away
Q You think it would be impossible?
A Yes I do. If there were no gophers there the water could run over them a foot and not carry them away
Q Do you not know that the lifting force of the outside water is about two thirds of the resisting power of the levee?
A I do not know anything about it
Mr Carlen I object to that. He assumes an impossible thing
The Court It is unnecessary to talk about it. The witness says he doesn't know anything about it
Mr Cadwalader Q Now when the levee goes away you always think it is done by gophers do you not?
A I think mine was

I know it was

Q The levees always give way at that time in the 24 hours when the pressure of the water is the heaviest down there?

A Well the gopher holes are like this —

Mr Cadwalader <int'g> That is not what I ask you. I ask you whether these levees do not break just about the time in the 24 hours when the pressure of the water is the heaviest —

Mr Catlin I insist that he shall be allowed to answer the first question

A Well when the water is the highest

Mr Cadwalader Q But it is the point of time when the water is the highest in the 24 hours?

A When it broke at my place the water had been up to the highest

9461

I suppose. I was not there at the time but I knew as we had worked on the levees

Q Do you know what time the Lovedell break occurred? A No sir I was not up at Lovedell's

Q Where were you at the time your levee gave way? A I was in bed.

Q In San Francisco?

A In bed I had been up all night for two nights and I could not stand it any longer. I was up that night until 12 o'clock

Q It broke between 12 o'clock and daylight?

A Yes

Q The Lovedell break gave way just about that time?

A I do not know what time it did give way. I know it did give way in the night

Q The Lovedell break

gave way between 12 o'clock and sunrise.

Mr Catlin I object to this, it is not cross examination. I made no inquiry as to the Lowdell break. That occurred two years before this time. I made no inquiry about that.

The Witness It occurred in the night.

Q What is the time the water is the heaviest. It always gets the heaviest between 12 o'clock and daylight? A I do not know as to that, what time it gets the heaviest.

Mr Meadowcraft The river fills from the melting of the snows. The snow water comes down and these levees give away by hydrostatic pressure.

The Court Never mind discussing it, but go on with the witness.

Mr Meadowcraft There has been no filing of any account

in the tule land there?
A- Yes.
Q- What from?
A- From that break in the River.
Q- From the breaks? A- Yes.
Q- Otherwise there has been no filling and you still have a ten foot fall on your land before you get there?
A- I do not know I can not tell you now. When I said ten feet I had reference to before this sediment came on last winter.
Q- It is ten feet with the exceptions of the breaks made last Winter? A- I should think it was.
Q- When did that break occur?
A- It occurred in February the first of February.
Q- When did they close it?
A- I can not remember exactly. I judge it was running through six weeks from the time of the break until it was fixed up.
Q- They were not able to fix

it up before the water got below the natural bank, were they?
A- Yes. It took away the bank you know. It took away my bank three five or six feet
2- I know that but I mean they were not able to close that break finally?
A- Yes they did close it up finally
2- Then the water was down below what was once the natural banks?
A- No. They were there measuring it in boats and the water was coming in there like everything, and the water was from two feet to eight there where they drove the piles- it was two feet to nine. On the outsides on both the outer sides the water low but in the center the water was nine feet deep - over the bank of the river.
2- My question was this, did they succeed in closing that break finally before.

9465

the water got down below what was once the top of the bank.

Q- What was once below it?

Q- Yes?

A- No. Because the bridge was in between and there was the banks of the River on each side and you could see it.

Q- They had steamboats and barges down then did they not?
A- Yes.

Q- Sacks by the thousands?

A- Yes.

Q- And willow-trees by the hundred-cords?
A- Well they made what they call a facine.
Q- The water run nine feet over the bank?
A- Not over the original bank.

Q And the water you say ran nine feet over your bank

A NOT over the original bank

Q How much did it run over the original bank?

A I could not tell the original bank had gone six feet where the water came through it or through the bank.

Q You think it ran about six feet deep over your place

A over my place

Q Yes sir

A Where it run through the break in the levee nine feet in some places - from two to nine feet; down back it was 15 feet

Q I want to get at how deep was the water over your natural surface?

A Well you mean where the break was or all over all over the place.

Q Well all over the place?

A Well in the most of it

from two to 12 feet
Q What was the stage of water in the Sacramento River at the time that break occurred there?
A I do not know just about what it measured, in the neighborhood of 24 feet I should judge.
Q The water stood up towards Sacramento didn't it - spread up towards Sacramento and down towards Willow Slough?
A That would be towards Sacramento, Willow Slough is, it set our down to Freeport.
Q Covering the Riverside Road as it went up
A I do not think it covered it up until you get clear up to the butchers
Q Well covering the gardens to the east?
A It did not cover them at Sutterville, the Italian gardens were never covered up

With water - not much.
Q Back of your place about
a mile are what are called
high lands are there not?
A No not back of my place.
East of my place is
Q East of your place you
go back about a mile?
A A mile and a half.
Q There you strike what is
called the Theodore Winters
place dont you?
A Yes sir
Q Well this Chain of Lakes
runs close along the bank
of that bluff?
A That Lake does they call
it now Winters Lake. he
Owns the most of it
Q And when it gets down
about opposite the Haymond
place - you know where that
is dont you?
A The what place.
Q The Haymond & Allen place
A The Lake dont extend down
there.
Q Where does it turn and

runs across the Freeport
Road ?
A There is no Lake runs
across the Freeport Road.
There is the Drainage Canal
runs across there. That
Stops right as Gees place
Gee Joins Winters, four
of them own the Lake toge-
ther and the drainage Canal
is Continued on.
Q It turns to the left and
Crosses the high lands does
it not
A Right on the brow between
the tule and the ridge of
the high lands.
Mr Collin Is that the Grundon
Lake
A No sir I am speaking of
the Canal
Q The one owned by Winters
A That is the same thing
Grundon Lake
Mr Cadwalader You say the
break in your levee was
Caused by the steamboats
Mr Collin He did not say so.

A No I did not say any such a thing.
Q Well you say that Steam boats had something to do with some breaks didnt you?
A I have never said a word about steamboats since I have been here. You asked me if there were not Steam boats down there fixing the break and I told you yes, One brought down hands and brought the barge down.
Q You spoke of a place Called Willow slough where is that?
A Well it runs between Gees ranch and Theodore Winters and joins them both
Q That is east of the Freeport road is it not?
A Well the Freeport road runs right over it you know
Q It is east of the Freeport road
A A part of it is yes sir
Q Well the drainage Canal runs into Willow Slough

doesn't it ?
A No.
Q It don't ? A No sir
Q You say that Beaches
Lake is filled up ?
A No I did not say so.
Q What did you mean by
saying that some Lakes
were higher ?
A I say Beaches Lake is
higher with water, I did not
say with anything else. I say
it will run up and has
run up every year but one.
Q How do you account for that
A Well we account for it
in this way that there are
more inlets into Beaches Lake
it will rise faster than ours
Can and as we have dug
that Canal down to it it
runs up that Canal and
runs into our lake a little
while in the first part of
the year when there are heavy
rains.
Q It comes from the filling
up of the Rosumnes does it not

A I do not know as to that.
Q Or rather the Mokelumne. these Lakes all drain into the Mokelumne do they not?
A They drain as I understand into Snodgrass Slough — I do not know it.
Q You have mines on the Mokelumne haven't you?
A no.
Mr Catlin I object to that.
A I have no mines sir
Mr Cadwalader How high was the water on your levee at the time of the break?
A Well it came within probably 18 inches of going over it.
Q How high was the levee?
A The levee I think was about six feet high.
Q Was it not more than six feet
A The levee more than six feet?
Q Yes sir.
A I think it is about six feet or six and a half
Q That is the new levee?

A Well we made it just the same as before, we may have dug on a little more not much this fall, a little dirt, but I mean at the time of the breaks about six feet I should Judge. I built it originally myself and I Know

Q What is the Condition of your land after the water gets two or three feet on that levee?

A Well if there is no back water - my orchard is all right, if there is no back water in the tule I am all right.

Q But when there is high water in the River there is high water in the tule is there not?

A Yes sir always.

Q Always?

A Because it has rained a good deal, when it has rained a good deal there is going to be back water on it

And we Know it.
Q I will ask you whether there has not been a steady decrease in the Cultivatable land in that Docket since 1861 ?
A I think there has
Q And has it not got to be so that two thirds —
A (Interrupting) Or some years
Q And has it not got to be so that all the farms Commencing with Mrs Whiteleys and going down to Freeport has lost two thirds of there front land — the use of two thirds of there front land in the planting season ?
Mr Catlin I object to that question.
A What on the bank of the River ? Not that I Know of I do not Know anything of that Kind.
Mr Catlin I object to that I did not inquire about any other land except his land.

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Mr Cadwalader Have you
been down there -
Mr Collin I am making an
objection and I desire to have
it passed upon. My examination
was confined to those lands
I did not desire to ask
him about lands which I
suppose he is not particularly
acquainted with. I confined my
examination to his own lands
Mr Cadwalader He said before
Mr Collin objected that there
had been a loss of two
thirds of the Cultivable
land and now I want to
show -
The Witness (Interrupting) I
did not say that.
Mr Cadwalader I want to
show that the loss is still
greater.
Mr. Collin It is did not say
that and if he had, I should
have made an objection
The Court. Try to confine it to
what the direct Examination
was.

Mr. Cadwalader I t is necessary cross examination because it goes to show that there has been a loss of 2/3 of the front land down there

The Witness I would like to explain myself about that loss of 2/3 since 1862. That is the way you get a man on the stand and you do not give him a chance to explain himself. I have got to say yes or no to questions, and if I had a chance to explain I could tell you why the loss was and what on the loss.

Mr. Catlin Go on and make your explanation now.

Mr. Cadwalader I want to ask him a question.

Mr Catlin. When he thinks that the witness is going to say something that is not in his favor —

The Court (Intg) If you want to explain an answer that you gave you can do so

A. It was owing since 1862

to the drainage canal and so much water drained in on the back of us that we have lost our back land. That is the Explanation I wished to make there, the drainage canal, and so much water coming down Willow Slough

Mr. Cadwalader Haven't you lost your front land through water that you have attempted to carry off in the drains from the base of the levee?

A No, I do not think there has been afoot, only what has caved away on the outside, none on the bank of the river. They have not lost any land, they can cultivate just as much as they owned.

Q How wide is that strip on the bank of the river?

A Well, in some places it is 20 rods and in some 40 and in some 80 and so on

Q Has it not, for the first two miles below Mrs. Whitely's, got down to less than one

yards.

Mr. Catlin I object to that-

A I am not so much acquainted down there that is, I do not go down there so much to Mrs Whitely's. I am acquainted from Mrs Whitelys up to the City

2 Down at Mrs Whitelys —

Mr. Catlin I desire to object to that question as not being in Cross-examination.

The Court. Try to confine the examination to what was brought out in Chief. There ought be enough of it probably

Mr. Cadwalader Here is a particular section of the land called The Pocket and the Gentleman thinks that he can confine the witnesses answer to a particular part of the Pocket and to cut me off from an Examination in relation to the balance of the Pocket.

Mr. Catlin I may call other witnesses in regard to the balance of the Pocket and

then you can cross-Examine them

Mr. Cadwalader That is the question I want to ask them

Mr. Catlin I object to that as not in cross-Examination.

The Court. I do not remember anything outside of this land unless it be those lakes. Something was asked about those on direct examination

Mr Cadwalader This land is all contiguous to the lakes in this Pocket.

The Court. He said something about the lakes and the drainage canal

Mr Catlin It is within a short distance of one lake, but it is a long distance from Beach Lake

Mr Cadwalader I will put it this way. Has not the Marsh land come up to the County Road on the east from your place, down to Freeport — Can you do any plowing during the plowing season from your place down to Freeport

9x80

on the East side of the County Road? A. Cant we do any plowing?

Q Yes sir A Yes sir, we can do plowing but it is just like this; you dont know anything about our land. Our land is tule land, the tules will get to be 6 feet high say in July; well then, that is too late, we can not afford to go and mow them off, it is too late to get in a crop and so we let it go, but we could plow that part if we could be to the trouble and Expense to cut the tules off at that time of the year.

Q So that, the tules do come up to the County Road?

Mr Catlin I object to that as not in cross Examination

Mr. Cadwalader. From your place down to Freeport?

A There is no tule Except over on the road there by Klotz; then where the County Road comes through the tule

where the bridge crosses the drainage canal. At the East of me I strike Water, of course I dont out to the County Road.

2. From Mrs Whitely's down has not the cultivation of the land on the East side of the County Road been abandoned?

A I do not know that it has been abandoned, they still hold it

2. They still hold it? A Yes sir, we can cultivate it somewhat, if there is a good deal of rain, 24 or 25 inches of rain we can not use the back land; if there is not more than 8 or 10 inches, we can, those that have kept the tule down

2. Do not the strip of cultivable land in that Pocket below your place reduces in the plowing or the planting season to about 100 yards in width?

A. No more so than it always has been, always from the time it was first taken up

———"———

Mr. Hart I desire to recall Mr. Bassett for cross examination.

Mr. Lattin I object to that I wanted to continue my original examination and you refused to allow me to do it and I object to your recalling the witness.

Mr. Hart It is something that he has ascertained on a subsequent examination.

The Court If it was a subsequent examination I will not allow him to be recalled.

Mr. Hart I desire to recall him on the stand and ask him questions and when I ask the questions if they are objectionable it will be all right, but I want to show by this witness, which I think I have a right to show, as they examined him and re-examined him as to whether or not the water in those pits was sipage water, I desire to ask him something

further in relation to that matter. It is this witness and I did ask him as many questions as suggested themselves to me then I desire to ask him some further questions at this time and in this connection I may say that this case is so important to be permitted to stand upon any mere technical objection as to the order in which testimony shall be admitted. I have at all times conceded to them the right to recall our witnesses for cross examination and I made the objection to their continuing this witness until today the other day simply for the purpose of saving time and I think I can safely say that in cross examination of witnesses in this case so far as I am concerned I have confined it to the proper limits in all cases. I have not taken very great

latitude or consumed
much time and I ask this
as a matter which is pos-
sibly in the discretion of the
Court, that in this instance
that the witness having
not fully testified, that I
be permitted to ask the wit-
ness what he knows upon
the subject of the sipage water
coming in and I say to Your
Honor upon such testimony
I propose to demonstrate upon
cross examination that the
sipage water does come in
here and is regulated by the
height of the river, from
investigations that have been
made by him before and
since - when he arrived at
the knowledge of these facts
it seems to me, is a matter
that is entirely immaterial,
but there are some things
which he knows and has
known and which he did
not know he knew and
which I subsequently learned

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he knew and these are the resons I give for seeking to recall him.

The Court If the witness made any mistakes he can go on and correct them but I do no think it is proper for him to come on now and give the results of other examinations. Mr. Hart - Mr. Catlin undertook to crossexamine his witness the other day and Your Honor will remember that he said to him "do not you know that the drainage from the Gas Works and the drainage from another place then - the Winery - don't you know that that comes from that place?" - for the purpose of throwing discredit upon him, or for the purpose of raising a doubt as to whether this was sipage water. He said then "I do not know". Now the witness in order to satisfy his own mind has gone

9486

time to ascertain that fact Now I desire to ask him upon re cross examination, because I did no re cross upon that question— I want to ask him upon re cross examination whether or not they do come in there. Now it makes no difference when he learned it if he knows the fact that they do not and never did and never could have gone in there, it makes no difference when he did it.

The Court He has not answered that he did. I do not see anything to correct.

Mr. Hart He said he did not know and I want to show as a fact that he does know as a fact.

The Court I will decline to permit you to put him on the stand for that purpose

Mr. Hart I said on the stat that I had other purposes.

The Court You have not disclosed any other purpose.

Mr Hart The other is to cross examine him as to knowledge that he had beforehand as for instance: that he has investigated the subject for sometime and that there are holes in the ground- the ground is porous, holes have been made by the roots of trees and by worms, and that by digging into the ground at different times he has noticed that the sipage water actually squirts from the holes, and that from the excavations that are being made that it is necessary to pump to keep the holes from filling up. These are other matters that are within his knowledge. I think these are matters of easy determination.

Mr Leckie I purposely abstained from asking him

any question upon the subject of this sipage. I know perfectly well what his opinions were and I did not ask for them, I merely called him as a City Official here, who was the only person by whom I could prove the grades of these sewers and the grades of the drainage tunnel from one end of it to the other, and prove its depth, its width, and location. I ceased when I had accomplished that purpose, but it appears that in some way I must have asked some general question, what it is I am not aware of and can not remember, which the Court at the time thought opened up to them the right on cross examination to go into this question of sipage, and we, of course, acceded to the ruling of the Court although I thought at the time that I must have against my own intention

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opened that subject to the attention of the witness. He was examined on it.

The Court You asked him if that water that came up did not back up into the City and how far it came up and where it stood, and they asked if that was the only source from which the water came.

Mr Cattin That was the question upon which I must have opened it if I did at all.

The Court After getting the evidence out you then asked if the water did not in fact come up into the City and how high it stood.

Mr Cattin I asked him whether these grades were given from low water level and he said they were. That would have been sufficient but it appears that Counsel still further and asked this question whether or not

when the water was higher and the basin was filled whether practically that did not destroy that grade during that period of time. But assuming that the subject matter was opened, they went into it and stopped, they continued about these two excavations below R street one of which had yellow water in and the other clear water and asked fully about it and asked about this seeing water ooze through the levee at different places, through a well here, and at a different point three three or four miles up and down the river. They went fully into it and then on redirect examination I was questioning him when we were drawing towards the hour of adjournment and I then asked the privilege of continuing that until today. The Attorney

General objected to it and it was determined by the Court on his objection that I should close my examination then and did so. It seems to me that it would not be fair

Mr. Hart That was under agreement.

Mr Catlin It would not be fair for the Attorney-General to come in and ask leave to continue his crossexamination under those circumstances

Mr Hart I agreed to a continuance on last Saturday on condition that you would close with that witness

Mr Catlin The Attorney General would not agree that I should continue my examination to day and there were some questions which I then thought that I would be able to formulate, but the privilege being denied I of course have not done

9492 it and it don't seem to me

to be right that the discretion of the Court should be exercised to give them the privilege of opening this subject

Mr Hart. The ground upon which I made the objection last Saturday as Your Honor will remember was, that I had agreed with Mr Dibble that upon the conclusion of the testimony of that witness the case should be continued and Your Honor continued it upon that agreement and I insisted that they should conclude the examination of that witness before they adjourned for the purpose of punishment I have never in any instance in this Court objected to recalling any witness that they desired to recall but on the contrary have in every instance extended to them the

agreement that whenever they desired to recall a witness they should do so. I announce now that if this rule is made that I will object to recalling any witness hereafter in this case.

Mr Catlin Very well I will abide by it.

The Court It is a matter of discretion whether a witness shall be recalled or not. Besides all that I know I am almost universally liberal in allowing it, desiring that each party shall have the fullest opportunity to demonstrate the correctness, candor and accuracy of every witness that can be required in this case. I do not suppose that this witness is proposed to be called because there is any suspicion of his unfairness or ~~want~~ lack of accuracy. It seems to be

admitted that on these questions his opinions are against the party that called him. There cannot be that excuse therefore for recalling him. I do not know that there is anything in his testimony that requires explanation. It seems to be supposed that he can state further facts in corroboration of many which he has stated, or which would strengthen his testimony for the plaintiff. In the first place it was a matter of doubt in my mind whether the plaintiff should go into that question on cross examination. She stated several circumstances why he knew that water percolated through the banks of the river, he had seen it come out of a well and he had seen these others which were

alluded to and which were stated on cross examination, he had seen other evidences of the fact that the water percolated through the levees and banks of the river. You now propose to have him state still further facts, or rather the same facts with more minuteness it seems from the statement Considering the doubtfulness whether I ought to have allowed it or not and all the circumstances, I will decline still to allow it. I regret to do it, because as I stated before it is my almost universal practice to allow the utmost latitude in matters of that kind. I think perhaps under all the circumstances I ought not to allow it

Mr Hall I will take an exception and then I will

9496
Ex

state more particularly what I offer to prove by him.

We offer to prove by the witness, that the soil immediately underlying the City is very porous so much so, that if an excavation is made and the earth smoothly sliced down with a spade very many of them can be seen in a square foot of surface. These holes are what were once the roots of trees and plants which force their way through the soil, finally dying and rotting leaving a hole where the root had formerly been and these holes are also partially due to the borings of earth worms, and that these holes when made by earth worms and decayed roots weaving and interlacing as they do

give ready chance for the passage of water through the soil. Digging down below the pipage line, as in digging wells and then keeping the water down by pumping the water can be seen coming in to these holes, sometimes in the Spring it squirts out and sometimes runs a long time without being exhausted, showing that they connect with other holes for a long distance back in the soil. We also offer to prove that the excavations mentioned in the testimony on last Saturday have since been examined by him; that there is drainage from the Gas Works and the Winery into those holes or any other place and the only means for water to get into them is by pipage from the river and that the hole nearest the river has 4 inches more water in it at this time than the hole next to it and further to the Eastward.

The Court disallowing it, we take an exception.

Mr Badwalader: Will your Honor allow us to ask Mr Fern one question?

The Court: Certainly if it is in the line of cross examination.

Ex

9498

Testimony of Washington Ferry called

Mr. Cadwalader I have been old since you left the stand that you had noticed sinage water from the river. At what place have you noticed it. Where does it manifest itself?

Mr. Catlin I object & that is not in cross-examination unless it is confined to places where we examined

Mr. Cadwalader It is confined to the same places, to his ranch

A. I noticed it in the ditch which I dug?

Q Where is that ditch?

A Down the river I dug a ditch the whole length of my ranch to drain it. That is 1/4 of a mile from the river

Q and there you noticed

the seepage water coming into it from the river?
A Yes. A little coming in up from the river
Mr Cathin I did not quite understand where that ditch was? A It is a little over a quarter of mile up on the upper side of my ranch. It is lower land than the other side, and I have a ditch did there before the flood filled it up. I dug a ditch the whole length and then had coop ditches to run into it.
Q Where does the ditch lead from? A From the river
Q How near did the ditch come to the river?
A A little over 1/4 of a mile there is a quarter mile tree we have, which is just 1/4 of a mile from the river
Mr. Cadwalader This river comes when the river gets above its natural bank? A Yes.

9500

Mr. Catlin It is not above the Natural bank now?

A Oh no. There is no sign of water there now. I was down yesterday a mile, where I have a ditch across and there was not water in it

Testimony of A A Howard

Called for deft Sworn

Mr. Dibble. Where do you reside.

A Placerville, El Dorado County

2 When did you come to California?

A 1850

2 What time? A The 29th of July, I arrived

2 When did you arrive at Sacramento? A. I was at Sacramento the first week of August 1850

2. How did you come here?

A I came here on horse back.

2 Did you have occasion to examine the rivers, the American and the Sacramento

at the time you arrived
there in August 1850?
A I had occasion to Examine
the Sacramento as far as my
curiosity about the river was
concerned, standing on the bank
and looking at it
2 State whether you found
any evidences of high floods,
if so what were they?
A I was up the river about
the 1st of September 1850, a few
miles above there. I slept
one night on the bank of the
river, and in camp I observed
above us, perhaps 10 feet above
where we were camped on the
bank of the river, evidences
of floods, and water marks
on the timber
2 How high were these marks
with reference to the then con-
dition of the river — above
it?
A From 25 to 30
feet above the water of the
river
Mr Hart. 10 feet above where
you slept?
A Yes.

9502

Wm Dibble Where was the point where you left?

A I think it was about 12 miles above here. I am not sure of the distance

2 When did you go to Placerville and make it your home?

A I have made it my home continuously in El Dorado County since the 29th of July 1850 with the Exception of the fall of 1851 and the Spring of 1852 when I returned East for my family

2 What business did you engage in then and what besides have you followed?

A I was Engaged in mining. The first 5 years I was in the Country, and also in the Store, and Butcher business.

2 Where did you first mine?

A I first mined on Kanaka Bar on the American River, the South Fork of the American River

2 How long did you continue to mine there? A I mined on that bar until the rise

9503

of water in the fall. I do not recollect what time it was

2 How did you do the mining?

A I did the mining by digging, throwing off the surface dirt and taking out the bottom dirt and rocking it with a rocker

2 What became of the tailings?

A It went into the South Fork of the American River

2 In the years 1850 and 1851 did you have occasion to Examine the American River and its forks?

A I had very good occasion to examine the South Fork. I did see the other forks during that year.

2 How many men were engaged in mining on the South Fork of the American River?

A I should judge from 3000 to 4000.

2 What kind of mining were they doing?

A They were doing bar and

bank mining.

2 Where did the tailings go to from their mining?

A Into the river

2 Have much was the displacement to the man?

A I could not form a correct Estimate of that. I showed about 6 to 10 cubic yards perhaps more

2 At that time in 1850 and 1851 what was the number of men engaged in mining outside of the men mining in the South Fork? A In what bounds?

2 El Dorado County, outside of the miners in the South Fork? A I showed say 15000 or 16000

2 What kind of mining were they doing? A Surface mining

2 What became of the tailings from that mining?

A They were dumped into the nearest stream or ravine from the mines

2 What then? A. From there down into the Streams.

9570

Q State the effect?
A The effect was, the greater portion of them came down the stream at that time — the surface ground
Q How much did these 15000 miners displace, working the placers? A. In 1850 and 1851?
Q In 1850 and 1851?
A Inclined ridge not more than from 6 to 10 cubic yards, the displacement at that time while they were using rockers was not as great as it was a little while after.
Q What was the condition of the water of the South Fork of the American River, say at the time you arrived there in 1850? A Clear
Q What was it after you arrived in 1850?
A. When I commenced mining on Kanaka Bar the water was clear in the river. A little while after that it began to flow muddy

on the South side, - the side the miners were generally mining on and gather clean on the North side until some time afterwards. Finally the whole stream became muddy

2 What was the condition of the water in 1851?

A Muddy

2 How muddy?

A Well, I think I have never seen it any more so than in 1851 and 1852

Q How many days did these miners work the 150 you refer to in the placers - during the year?

A I think 300 and perhaps more. A great many of them mined Sundays and all of them I think would average 300 days in the year

Q What was the character of the material displaced?

A It was surface loam light earth generally

Q What was the effect of the flood of 1861-2 upon the material so displaced? A Ashley were either carried away or levelled down. They disappeared. The banks of tailings disappeared those years and went down stream and were levelled into the lower placers together.

Q What other kinds of

mining besides river and placer were done in El Dorado County prior to 1862?

A There was bank mining, tunnelling and a little hydraulic mining

Q and quartz?

A and quartz

Q Since the great flood of 1862 what was the character of the mining in El Dorado County?

A It has been hydraulic, quartz, surface and pure seam, what they call seam diggings.

Q and drift?

A and drift

Q When did river mining practically cease on the South fork?

Mr Stark Practically?

Mr Gibble Mainly I mean.

A About 1857 or 1858.

Q State whether the river at the time that river mining mainly ceased had been filled

so as to prevent further river mining by the owners of mines in the river
<Objected to as leading; objection sustained>

Mr Dibble Q What was the reason of mining generally ceasing in the river at the time you refer to?

Mr Cadwalader That assumes a predicate and is objectionable on that ground.

The Court The Witness has already stated that it mainly ceased at a certain time. Now let him state why if he knows:

Q Do you know any reason why it ceased at that time?

A I think the bars were principally worked out there have been some new working in the pines, hunting crevices &c but I think the surface bars were worked out

pretty well at that time and men commenced leaving and going to the mines. That is the only reason I know.

Mr. Dibble Q State the depth of material that had been washed from the higher ravines down in the river at the time mining ceased in the mines in 1856; 1857 or 1858. whenever it was?

A In some places it was 10 or 15 feet. The Rich Chile Bar was 15 feet deep in some places with tailings about 1857 or 1858.

Q Since 1861 what has been the population of El Dorado County dependent on the mining industry?

Mr. Hart That question is objected to and particularly upon the ground that the defense have sworn enough witness upon the subject at this time. It is a

collateral question, a question which it seems to me is utterly irrelevant

The Court One witness would hardly be sufficient when it was going to be a matter of controversy

Mr Hart I do not think it is going to be a matter of controversy. That is my impression. Further whether El Dorado County is largely a mining County is immaterial in every sense. The scope of the industry as a State industry could be the only respect in which it could be material.

Mr Dibble On our side we regard this as a very important matter. If it is admitted, ~~that~~ the statement Judge Blanchard made here, and will not be controverted or attempted to be controverted by opposing Counsel, we

would be willing to accept the admission and let it go on the record that such is the fact. But I presume after we have closed our testimony they will make efforts to disprove it. Therefore it ought to be strongly proved before they come in with their testimony. I presume they will seek to prove how many persons are engaged in vineyards and in farming and attempt to show that the statements made by Judge Blanchard are not correct in that particular. And there is another point connected with it: We propose to go further. We propose to show in this case that the industry of Sacramento and San Francisco, or 50 or 60 or 70 per cent of it depends upon the mining industry; has in the past and

does now. The Court understands very well that the question is a very grave one, involving not only our own mining industry in California but in all the mining States and Territories and we are anxious to go into these matters with the permission of the Court.

The Court I can hardly see what line of testimony you could take to establish that last proposition

Mr. Dibble By merchants, foundrymen and others who understand the business of the Cities and to what extent they are positively dependent on the mining industry For instance, the foundries of the Cities of the State of California; 75 to 80 per cent of all their work goes into the mining industry. It is a very

broad and wide indeed and the testimony we desire to introduce, will carry to the Court and carry especially into the Record, facts that should be known

Mr Stark After the defendants closes if we should determine to contradict the testimony of Judge Blanchard in relation to El Dorado County then Counsel would have a right to introduce witnesses on the subject. But at this time we are of the opinion that we do not desire to do that so that time may be saved by accepting that, unless we change our views on the subject.

The Court Then we will take that at present; and if Counsel for plaintiff should think different hereafter, we will be guided by that.

9575

Mr. Dibble Take the answer or the admission?

The Court You had better omit it for the present. The Attorney General says he does not intend to controvert the statement of Mr. Blanchard as to the industry of El Dorado County.

Mr. Dibble 2- Compare the mining removed prior to 1862 at the time of the great flood with the mining removed from 1862 to 1870 and state result? A- It was much greater.

2- How many times greater? A- It was 40 time greater.

2- Which was greater?

A- That prior to 1862 or subsequent?

A- That was before 1862.

2- Compare the mining removed prior to 1862 at the time of the great flood with the mining removed from 1870 up to 1881, and state result?

9576

A- A very small percentage removed from 1872 compared with that.

Mr. Hart - Since 1870?

A- Since 1870. Yes.

Mr. Dibble How much, how, how many times less?

A- I would say 100 times less.

Mr. Hart That is in El Dorado County? A- Yes.

Mr. Rhodes On the South Fork.

Mr. Dibble Compare the density and movability of the material removed up to the time of the great flood of 1862 with the density and movability of the material removed since 1870 and up to the present time and state result?

A- I do not understand that question.

(The Reporter read the question)

A- The density since 1862 has been much greater and harder to move.

Mr. Hart Since 1862 did

you say?

Mr. Dibble Since 1870.

A- In former times in early mining the deposit was not great. It formed a solution and nearly all has disappeared since then they have gone into the hills and the hydraulic mining particularly — in this kind of mining the material has been very deep and moved but a short distance

2. As to the density and movability what is the character of the material remaining in the grand channels to be worked hereafter

Mr Hart. That is in El Dorado County.

Mr Dibble Yes.

Mr. Hart. I hardly think it is material, but I will not object I guess

The Court. Answer it?

The Witness They are boulders, Cement and what we call cobbles, smaller stones and the heavier portion of the sand

and gravel.
2 What percent of that material will remain at the dump or near the dump?
A I think 80 percent
2 What per cent of it will go ten miles
Mr Hart. I object to this unless the witness shows himself to be competent to testify on that subject
The Court. I think we have gone far enough in that subject. It is a very different thing to say what will remain at the dump and what will be transported a given distance, and he is hardly qualified to answer as to the distance it will be transported
Mr Doble I seemed like to suggest that a man could very readily tell. From my experience I think I could be able to tell what it would be.
The Court. That is the trouble. You might think so.

Mr. Dibble I think I owned
The Court. I suppose however
the miners know more about
what will go down their flumes
and their tail races
Mr. Dibble How far are the
dumps of these mines from
Sacramento City?
A In my particular neighbor-
hood, I should say 60 & 70
miles by the water course.
Q State the facts in reference
to the amount of material
remaining at the dumps or in
the river adjacent to the
dumps? A What percentage?
Q State the facts with reference
to the per centage of the material
remaining at the dumps or in
the river near to the dumps
Mr. Cadwalader That ought to be
objected to because the testi-
mony shows that all the
mines in Eldorado County are
away from the river
Mr. Bleker If they are, none
of it could be likely to get
into the river

The Court That covered render it impossible to show that any got into the river. So on

A I think there is 80 per cent that remains near the dumps and perhaps 10 per cent of the remainder in the stream near the dumps.

2 State how you know such to be the fact?

A Observation and Experience

2 Where did you so observe it?

A Particularly in the Excelsior Mine and the Negro Hill mine and the Texas Hill mine.

2. Describe it? A The Excelsior Mine is about one mile from Weber Creek and I think 80 per cent of their dump remains before it gets into the creek. Perhaps 20 per cent goes into the Creek, and ½ of that amount stops within two miles after it gets into the Creek

2. That leaves only 10 per cent to go further. You say there is Stamp Mining in ElDorado

9521

County? A Yes.

2 To what extent are Stamps used in the County?

A There are some ten to twenty mills that I am acquainted with. I do not remember the number now. They I think all run from 300 to 400 stamps. Seventy mills perhaps.

2 What proportion of the 300 to 400 stamps are used in Crushing quartz? A Nok half. I do not think half of them are in quartz, near that though

2 Are they heavy or light stamps? A I do not know about the size of stamps. They are ordinary stamps that I have seen used in the mills throughout the Country

2 How many tons of quartz will they reduce in a day for a stamp?

A I have been told that they ought to reduce — I have no experience in quartz mines. To answer that question

9582

I will have to answer it on my information.

Q What is the character of the sand that comes from those stamps? A. Flour

Q State the difference between that kind of sand, flour sand, and the sand that is washed from the gravel channels?

A It is finer and runs with water more readily. It acts more in running water like quick sands continually moving until it finds a level

Q What with reference to the color is the difference?

A It is light, almost white

Q Have you any experience in the use of stamps upon cement - gravel cement?

A I have not, no sir

Q What kind of wash takes place in El Dorado County outside of the mining wash?

A The natural wash of the

9523 plowed land, the natural wash

of all their surface, what
we call land slides and all
kinds of wash from all
portions of the surface
washing more or less. In
the lower hills the ground
is more compact, but when
you get 20 miles above Placerville
into the forest it is very
light- and the denuding of the
land of its timber and the
hauling and cutting the
ground with teams hauling
with timber with horses over
it, causes great washes
to be there, and when
you get to the next
bench above it is de-
composed granite that
washes very fast into
the streams in the
Spring of the year and
in high waters

9524

Q Explain more fully in refference to the wash of granite, decomposing granite as you have seen it in in Elavado County?

A In the hills above the Forks - above what is known as the Silver Fork and the South Fork of the American River, they are largely composed of granite, decomposed and the side hills are steep and in runs dowmdry in many places, Keeping running on continually almost and the particles are about like grains of shelled Corn, the great mass of it, In that part of the country they have very heavy snows and when the snow comes down these granites are Coming down with great force into the streams and being much lighter than ordinary sands they wash and are Carried much further in suspension than heavy

95-25

Sands are.

Q Illustrate what you mean by the Construction of roads has had a great influence on the natural wash. Now the roads in Eldorado County are graded along side hills and the wash of the heavy rains come down the hills and always catch in the road and they cut them our so badly that the material part of our [illegible] road labor is done in the spring and fall in filling up the roads where the water has cut them our - where the water has reduced them. In the spring the roads are found to be badly gullied by the winter rains and we have to exhaust our road labor in the repair of the County roads. And again in the stock reign there the stock men and stock make trails where there are no roads along the sides of the hill and they

Wear them down until there is quite a depression made by the travel — enough to form a little ditch and the water coming down the hill runs into it and cuts it out entirely and we have to continually make new trails We cannot follow the old ones

Q You have stated that land slides had added to the old wash. Give instances?

A I have never seen a land slide but I have seen the effect of some 6 or 8 along the American river — most of them alongside of the river and two of them on the South side that were of great extent. I do not know to what extent. I have been told they came from near the top of the mountain but I never followed them up to see

Q Did you see their track?

A yes.

Q Where did this occur?
A One occurred on the South side of the river just below the mouth of the old South fork ditch there were three on the North side of the river within ten miles of that point, the largest of which was at Yarnell's Stobel and it came right down past his barn. That they told me there was 5 miles up. I did not go up to see but I saw the track of it
Q Give the width of the track of the slides?
A I think from 100 to 200 feet where I was at
Q And the others what is the width of them, of the slides?
A I think the one at the South fork ditch was much wider than that that occurred on the back bone of one of the points and came down hundreds

the river and it went both sides. It took a flume down with it. The others I never examined so particularly. I do not know what the width of these other two were that I saw

Q What was the height of the slides? A Well I should say it was a quarter of a mile up. I was told it came 5 miles down but I did not see it any more than I think about a quarter of a mile up

Q Had you seen the face of the mountain before ~~when~~ the slide occurred?

A Yes

Q What was the thickness of the slide that occurred you had seen the face of the mountain before?

A From 4 to 6 I should think 15 or 20 feet and it had large pine timber on it

Q Besides the slides you have mentioned you have

9529

seen other slides on the South fork of the American river or its effluents?

A Very many small ones

Q Give a general description of the small ones you have seen in number and amount — in number and material carried?

A I have seen slides in what is known as the Big Canon running down from near Placerville to the South Fork 100 feet high and as wide as 100 feet

Q State the cause of those slides? A The ground becomes thoroughly saturated with water — soft and the bed rock has grade enough for them to start on and they go on down. They are always caused by waters I think — heavy rains

9030 Q How large masses of

rock have been by these slides thrown down into the river?

A I do not know as I could form any correct estimate of that. Very large rocks came down though. Very large boulders come down with the slide It takes everything that is on the ground except the bed rock. It leaves it bare I never examined the size of the mass of boulders

Q How far are these slides, the slides you have been describing from Sacramento City?

A About 100 miles by the river

Q What became of the material that so fell into the river?

A It has been carried down, down stream

Q Compare the natural washing on the South Fork of the American

River in amount with the present mineral wash carried into the river and stake the result?

A The natural wash is much greater

Mr Hart Q Than the present mineral wash?

Mr Dibble Yes, the present mineral wash. To what extent greater?

A I should think fifty times greater

< Recess until 2 o'clock p. m. >